IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 685 OF 1995

1. Suresh Raghunath Gupte,
Food Inspector,
Thane Municipal Corpn.,
Dr, Almeida Road,
Thane.

2. Vijay Ramkrishna Deshmukh,
Chief Food Inspector,
Thane Municipal Corpn.,
Thane. ...Appellants.

Versus

1. Suresh Shridhar Parkar

2. Ramchandra Babaji Munj,
Partner,
Sanjay Provision Stores

3. M/s. Sanjay Provision Stores
Gala No.11, Near Bus Stop,
Shrirang Society, Thane.

4. The State of Maharashtra ...Respondents.

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Shri. R.S. Apte, Advocate for the appellants.

Shri.D.K.Ghaisas, Adv. for respondent Nos.1 to 3.

Shri. A.S. Shitole, A.P.P. for Respondent.

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CORAM: SMT. V.K. TAHILRAMANI, J.

DATED: 15TH DECEMBER, 2004

ORAL JUDGMENT:-

1. Through this appeal, the appellants i.e. original complainants have challenged the judgment

and order dated 29.6.1994 passed by the learned Chief Judicial Magistrate, Thane in C.C. No. 633/1985. By the said judgment and order, the learned Magistrate acquitted the respondents i.e. the original accused Nos. 1 to 3 of the offences under Section 7(1)(v) r.w. rule 50 punishable under Section 16(1)(a)(i) of the Prevention of Food Adulteration Act, 1954.

2. Facts leading to the present case, are as under:-

. That P.W.2 Shri. S.R. Gupte is the Food Inspector. On 20.2.1985 at about 11.00 a.m. he visited the shop of the accused. The said shop was being run under the name and style Sanjay Provision Stores situated at Shop No.1, Shrirang Society, Near S.T. Bus Stop, Thane. It is the prosecution case that the accused No.1 was present in the shop at the relevant time. The accused No.2 is the partner of the said shop. P.W.2 Shri. Gupte disclosed his identity as well as his intention to take sample of Palm Oil stored in the shop for the purposes of analysis. He then purchased the sample, paid its price, divided the sample in three equal parts. He followed the entire procedure for sampling, packing and sealing as per the Rules under the Prevention of Food Adulteration Act. One

of the samples was sent to Public Analyst and it was reported to the Local Health Authority. The report of the Public Analyst was received that the sample of Palm Oil does not confirm with the parameters prescribed under the Prevention of Food Adulteration Act. In view of this, sanction was sought to prosecute the accused. Sanction came to be accorded. Thereafter, the complaint came to be filed against the accused for having been in possession of adulterated Palm Oil for sale.

3. The evidence before the charge came to be recorded. Thereafter, a detailed charge was framed against the accused. Accused pleaded not guilty and claimed to be tried. The prosecution examined in all four witnesses. The learned Magistrate after going through the evidence adduced by the prosecution, acquitted the respondents as stated in para 1 above. Hence, this Appeal.

4. I have heard Shri. Apte, the learned advocate for the appellants, Shri. Ghaisas the learned advocate for the respondents-accused and the learned A.P.P.for the State. I have also perused the entire record pertaining to the present case. After carefully considering the matter, I am of the opinion that this appeal deserves to be dismissed.

5. In the present case Palm Oil came to be purchased by Food Inspector P.W.2 Shri. Gupte. The said Palm Oil was purchased vide receipts which are at Exh. 25, 26 and 27. However, it is seen in the said receipts that the word Ground Nut is scored and Palm Oil is inserted in all three receipts. No explanation has been furnished in respect of the said scoring out and overwriting. This creates a doubt whether the sample collected by the Food Inspector was of Ground Nut Oil or Palm Oil. In such case it cannot be stated positively that the Public Analyst's report pertained to the same sample of Palm Oil which was seized from the accused. This was one of the main grounds for acquitting the respondents.

6. As far as the accused No.2 is concerned, it is the prosecution case that the accused No.2 is the partner in the said business and hence he is liable for prosecution. However, there is no material on record to show that the accused No.2 is the partner and hence, he is liable for prosecution. The prosecution has failed to prove that the accused No.2 is the partner.

7. The sanction (Exh.42) does not disclose what is the public interest. The order does not even reveal as to how the partners are liable for

prosecution. The learned Magistrate has also observed that there is no material on record that the accused No.2 is the partner and as such he cannot be prosecuted. Looking to the evidence on record, it cannot be said that the view taken by the learned Magistrate was not a reasonable and possible.

8. The learned Magistrate has given some other plausible reasons for acquittal in the impugned judgment. However, I do not want to overburden this judgment by reiterating them.

9. It is well settled that if the view of acquittal could have been reasonably arrived at, then the mere circumstance that the appellate Court could have taken a different view, would be no ground to interfere. In my view, the view of acquittal was a reasonable and possible view. In the circumstance, I find no merit in this appeal and same is dismissed. The respondents-accused are on bail. Their bail bonds shall stand cancelled.